

Montgomery County
Farmland Preservation
Annual Report
FY1980 - FY2013



Being County Executive provides me a great opportunity to work closely with a diversity of businesses and citizens throughout the County. Many people recognize that the County is the ideal location for biotech and information technology businesses. What many people are not aware of, however, is that Montgomery County also has a thriving agricultural industry that contributes over \$243 million to the local economy.

The continued viability of the agricultural industry is strengthened through a variety of programs offered by the Department of Economic Development - Agricultural Services Division. Our agricultural preservation programs help to ensure that the economic contribution from agriculture will continue for many years to come. I am proud that Montgomery County has permanently reached our farmland preservation goal by protecting _____ acres within our Agricultural Reserve as outlined in this *Montgomery County Farmland Preservation Program Annual Report (FY1980-2013)*.

The Agricultural Preservation Programs, as referenced in this report, are integral to the County's public land use policy and key to the sustainability of the agricultural sector. Whether you enjoy purchasing fresh locally grown products or appreciate a beautiful vista as an open space amenity, all of us benefit from agricultural preservation.

We are proud that Montgomery County's Farmland Preservation Programs are recognized nationally as a leader in farmland preservation and we continue to work with the agricultural community to find avenues that will enhance the protection of this valuable resource.

The agricultural community should be commended for its stewardship in farmland preservation. The continued success of the preservation of farmland within the County could not be accomplished without this important and vital community.

A handwritten signature in black ink, reading "Isiah Leggett". The signature is fluid and cursive, with the first name "Isiah" and last name "Leggett" clearly distinguishable.

Isiah Leggett
County Executive

The Honorable Isiah Leggett, County Executive
Executive Office Building
101 Monroe Street, 2nd Floor
Rockville, Maryland 20850

Dear Mr. Leggett:

It gives us great pleasure to present *The Montgomery County Farmland Preservation Program Certification Report (FY1980-2013)*. This report details the progress we have made in our agricultural land preservation programs and initiatives over the past 33 years. The Agricultural Preservation Advisory Board (APAB) is encouraged by the continued program participation and quality of productive farms protected by easements under many of the programs that are available.

Many farmers have acknowledged the benefits our easement programs provide. We are very proud of the vital role these programs play in keeping important family farms in continued operation throughout Montgomery County. Our programs continue to focus on the preservation of farms with good soils which are threatened by development, while at the same time offering a protection opportunity to owners of small farms.

The APAB is pleased to report that while the County has reached its goal of preserving 70,000 acres in the Agricultural Reserve, we continue to find opportunities to enhance the letter of preservation of lands protected by transferable rights development rights easements through State and County purchase of development rights programs. We believe the achievement of this goal benefits all citizens by striking a balance between the preservation of agricultural and open spaces while promoting economic viability throughout the entire County. With the strong commitments from Montgomery County and with the agricultural community's willingness to participate in our programs, we look forward to an ongoing partnership that will help to protect our vital agricultural resources.

The APAB sincerely appreciates your demonstrated commitment to Agricultural Preservation and under your leadership we look forward to enhancing the protection of these important agricultural resources for many years to come.

Sincerely,



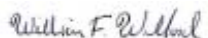
David Scott, Chairman



Bruce Connelly



Vince Berg



William Willard



Bob Cissell

John P. Zawitoski
Director of Planning and Promotions
Department of Economic Development
Agricultural Services Division

The Montgomery County Farmland Preservation Program Annual Report FY1980-FY2013

In addition to meeting the Annual reporting requirements under Chapter 2B of the Montgomery County Code, this report also is used to comply with the Priority Preservation Area (PPA) requirements established for certified Counties. This report details the tools and programs already being implemented by Montgomery County that emulates the spirit and intent of setting a Priority Preservation Area. While the name of our agricultural preservation area (Agricultural Reserve) and elements designed for the protection of this area may be called something else, they are in essence identical in substance. In terms of goal setting within the PPA, it is important to note that during FY2013, Montgomery County has achieved the goal for the protection of agricultural land through permanent easements with easements protecting _____ acres through June 30, 2012. Montgomery County was the first Maryland County approved for State Certification, without condition, under the new Priority Preservation Area (PPA) requirements. Montgomery County is State Certified through June 30, 2015.

The information below details the policies, zoning and other tools PDR/TDR accomplishments, and the creation of the Building Lot Termination program within the County's Agricultural Reserve documenting Montgomery County's long term commitment to the preservation of agricultural lands.

For over two hundred years, Montgomery County has been the home to a strong agricultural industry. There is a long and rich farming heritage in the County; a heritage and tradition that has contributed greatly to the incredibly high quality of life the residents of Montgomery County enjoy today. Preserving that heritage and encouraging its growth, through land preservation efforts and public policy, continues to be a top priority in Montgomery County.

The most significant initiative began over 30 years ago in 1980 when almost a third of the County, more than 93,000 acres of land, was designated as the County's Agricultural Reserve. The vision was to preserve this land not only for the benefit of the County's farmers, but to ensure future generations of residents would enjoy the environmental and esthetic benefits of this wondrous open space. The vision has become a reality. Montgomery County is recognized as a national leader in the field of land preservation by preserving over _____ acres of farmland to date. This represents about _____ percent of all agricultural land (_____) remaining that is protected by agricultural easements.

We have done this incredible work by partnering with rural landowners to utilize several agricultural land preservation programs. The programs are designed to work with the landowner to place agricultural and conservation easements on land to prevent future commercial, residential or industrial development of the property.

The most revolutionary tool created by the County to fight the battle against suburban sprawl, was the designation of a bona-fide agricultural zone, known as the Rural Density Transfer (RDT) Zone. This first-of-its-kind zoning became the predominant zoning in the Agricultural Reserve. By law, RDT zoning sets a 25 acre density for subdivision of land, but allows landowners to sell development rights based on the previous zoning designation of 1 unit

per 5 acres to areas designated for higher density growth elsewhere in the County. The results are that the rural landowner can recapture some of the lost equity which resulted from the 1980 down-zoning, while centering development in strategic areas where the existing infrastructure can accommodate the increased density. While this “transferable development rights” program has been successful, further protection measures have been necessary to protect farmland.

To keep Montgomery County's Farmland Preservation programs adequately funded, a combination of funding sources has been used, including:

Agricultural Transfer Taxes: Beginning with the certification of our farmland preservation program in *FY1990* and through *FY2012*, a total of \$_____ of agricultural transfer taxes have been retained by the County for agricultural land preservation.

Investment Income: Agricultural Transfer Taxes that are retained by Montgomery County are placed into an interest bearing account. Beginning in *FY1994*, the income generated by the interest was invested back into the agricultural land preservation program. As of *FY2012*, a total of \$_____ of interest has accrued. Investment Income has been used to fund preservation initiatives, emergency agricultural economic development initiatives and staffing costs. As of the end of *FY2012*, the fund balance of Investment Income is about \$_____ and is available to the program.

General Obligation Bonds: One alternative farmland preservation funding source is General Obligation Bonds. We currently have \$2.0 Million Dollars of General Obligation Bonds appropriated and committed to specific agricultural land preservation projects. Declining collections of Ag Transfer Taxes during the economic downturn, necessitated an infusion of agricultural land preservation funding to take advantage of declining land values to maximize the allocation of preservation funding to more farms.

Private Contributions: Included in this project for the first time is the ability to use private contributions to fund farmland preservation. There are currently two sources of private contributions that will be viable for this project. The first source is associated with an annexation agreement between the County, City of Gaithersburg, and the Developer of Crown Farm which has been annexed into the City of Gaithersburg. The Developer must remit a total of \$2 million dollars to the County's Agricultural Land Preservation Fund in accordance with the Annexation Agreement. The first payment is anticipated during March 2012. The second source of private contribution funding is associated with the County's Building Lot Termination Program. Under zoning and Chapter 2B of the Montgomery County Code, a developer seeking to develop under the optional method of development in Mixed Transit Zone (TMX), Life Science Zone (LS) and Commercial-Residential Zone may either acquire BLT's on the private BLT market or pay forward for certain density by contributing to the Agricultural Land Preservation Fund and the County will in turn utilize these funds for the purchase of BLT through the public funded BLT program. There are currently 5 projects that will be developing under the optional method of development and may provide revenues for the purchase of BLT easements.

State and Federal Grants: Beginning in 1997, the State's Rural Legacy Program was enacted as part of the State's Smart Growth and Neighborhood Conservation initiative to protect our natural resources. Since the first grants were awarded during the *FY1998-1999* grant cycle,

Montgomery County has been awarded/allocated a total of \$19.3 million in State Grant Funds. The Federal Farmland Protection Program (FPP) was first created for the State of Vermont and then in 1996, was finally expanded to include all States and Counties in the U.S. While Montgomery County Government has been an active participant within the FPP since its first year in 1996, changes to the program have made many jurisdictions across the United States ineligible or unable to qualify for Federal Funding. Unfortunately, Montgomery County and the State of Maryland are included among the jurisdictions which are unable to apply for Federal funds due to the new funding eligibility requirements. It is our hope that changes recommended in the 2007 Farm Bill will correct the deficiencies with this program to once again enable Montgomery County to be eligible for Federal Funds. While since the inception of the Federal program, Montgomery County has been awarded a total of \$792,363 in Federal Funds, a total of \$92,500 was returned to the Federal Government due to changes in eligibility requirements.

Programs and Program Administration

The Agricultural Services Division was created to support and promote the viability of the agricultural industry in Montgomery County. The Division works to increase the public's awareness of the value and economic impact of agriculture. In order to preserve working farmland, the Division is responsible for the administration of a variety of agricultural and conservation easement programs. To oversee the public policy for agricultural preservation, Chapter 2B of the Montgomery County Code provides for the establishment of an Agricultural Preservation Advisory Board (APAB). The role of the APAB is to promote the preservation of agriculture within the County. In general, the APAB sets priorities for easement acquisition, provides guidance for setting program policies, and makes recommendations on proposed regulations as well as mediation for certain review and approvals for easement servicing.

There are 7 primary land preservation programs available to landowners within Montgomery County.

	Total Acreage Protected
1. Maryland Agricultural Land Preservation Foundation (MALPF)	
2. The Montgomery County Agricultural Easement Program (AEP)	
3 Rural Legacy Program (RLP)	
4 Maryland Environmental Trust (MET), and other private trust organizations.	
5 Transferable Development Rights Program (TDRs)	52,052
6 Montgomery County Legacy Open Space Program (LOS)	0
7. Conservation Reserve Enhancement Program (CREP)	1,909*

- CREP Contract Phase Only

Farmland Preservation Programs:

1. *The Maryland Agricultural Land Preservation Foundation (MALPF)* was established in 1977 by the State Legislature as a result of concern over decreasing farmland acreage caused by development. Through FY2012, _____ acres of farmland has been protected by this program within the County. The MALPF purchases agricultural land preservation

easements directly from landowners for cash. Following the sale of the easement, agricultural uses of the property are encouraged to continue.

In 2007, State legislative changes to the program eliminate the need to create agricultural districts as a program eligibility requirement. Landowners can now apply directly to the County for selling an easement through MALPF. This administrative change will simplify the review and approval process which will save time. Once the easement is acquired, landowners retain title to the land and can sell the property in the future. However; future development of the property is limited to agriculture.

In order to determine the value of an easement, the MALPF employs the use of two fair market appraisals. The two appraisals are then averaged to arrive at the Fair Market Value of the property. Once the "Fair Market Value" is determined, the Restricted Value or "Agricultural Value" is determined by the use of a formula. The difference between the Fair Market Value and Agricultural Value represents the MALPF easement value. The restricted or "Agricultural Value" is generally considered to be the value of the land that remains once the development potential has been restricted from the easement property. In other words, since the development potential has been restricted, the highest and best use for the easement property would be limited to those uses associated with agricultural production and, therefore, the sales price would reflect the lower restricted "agricultural" value. Typically, an easement under this program can be settled within 12 - 24 months.

The Chart below details a summary of MALPF Acquisitions for *FY2002* through *FY2011*

FY02-FY11 Program Cycle

<u>Landowner</u>	<u>MALPF Program Cycle</u>	<u>Acres</u>	<u>FMV/Acre</u>	<u>Max Easement Value/Acre</u>	<u>Discounted Easement Offer/Acre</u>	<u>Discount Value</u>
James & Meg Evans	FY02	234	4,995	4,195	3,700	\$115,830.00
Cross Farm LLC	FY03	100	6,100	5,460	4,250	\$121,000.00
Cerino et al	FY03	109	5,300	4,506	3,700	\$87,854.00
Stabler et al	FY03	170	5,300	4,506	3,850	\$126,608.00
Carlin Farm LLC	FY03	130	5,300	4,505	3,900	\$78,650.00
Laney	FY03	12	4,402	3,608	3,608	\$0.00
					3,862	
MDR Friendly Acres	FY04	109.539	5,000	4,215	4,215	\$0.00
MDR Friends Advice	FY04	150.97	5,100	4,313	4,300	\$1,962.61
MDR Friends Ahoy	FY04	231.07	5,000	4,213	4,100	\$26,110.91
					4,205	
Bernard Mihm	FY05	272.84	5,200	4,406	3,900	\$137,045.04
Shiloh Farms LLC	FY06	140	7,192	6,327	5,800	\$73,817.00
Richard Biggs	FY08	137.85	10,920	10,282	7,049	\$445,831.90
John Doody Et al	FY08	165.02	9,939	9,415	7,455	\$323,503.87
Lonnie Luther	FY09	145.1000	10,848	10,244	10,244	<u>\$0.00</u>

Lewis Haines	FY09	98.5000	20,000	19,438	10,000	\$929,686.00
Drew Stabler	FY2010	55.2875	17,002	16,065	8,650	\$478,236.88
Lonnie Luther	FY2010	<u>98.4842</u>	<u>7,839</u>	<u>7,288</u>	<u>7,288</u>	<u>\$0.00</u>
		2,360	\$7,506	\$6,806	\$5,693	\$2,946,136.21

In general, values for settled easements during this time frame have typically averaged from about \$3,600 per acre upwards to \$10,000 per acre. It is important to note that the values paid for MALPF easements as noted above, represent a landowner's discounted easement offer. As land values increase, it is highly likely that higher easement values for MALPF easement purchases will result. However, the same is true in reverse; as the economy declines, easement values can be expected to decline as well. We will continue to monitoring the land values very closely as the slowing of the economy continued through 2012.

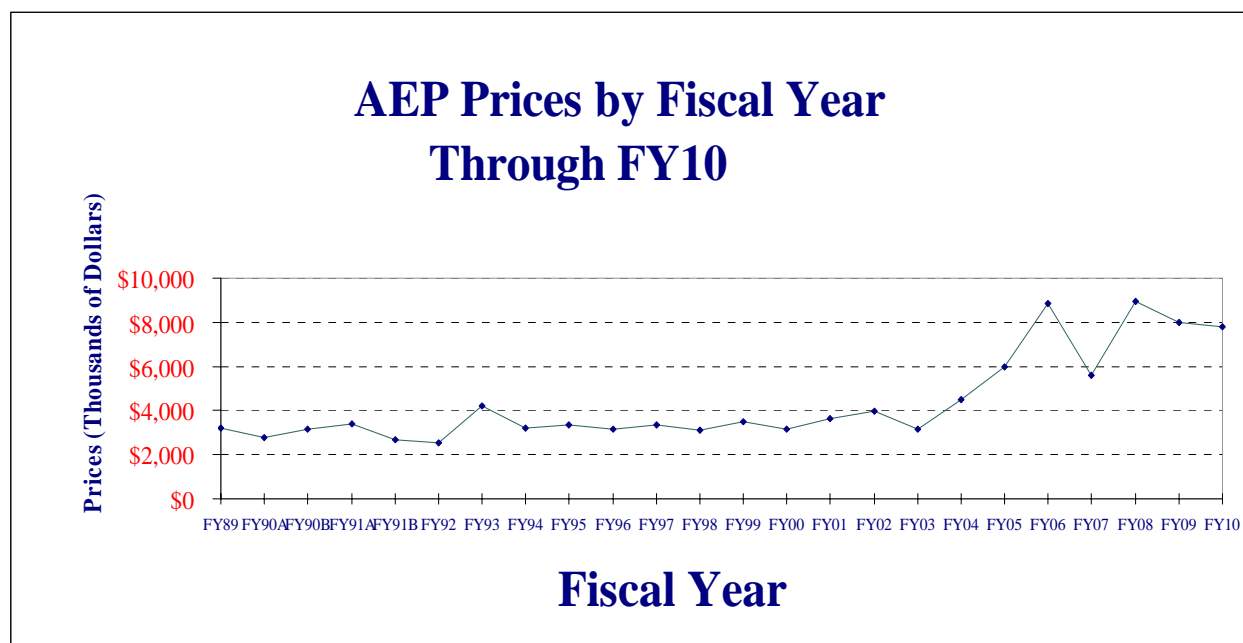
2. Montgomery County Agricultural Easement Program (AEP)- Established in 1987, this program gives the County the ability to Purchase agricultural land preservation easements to preserve land for agricultural production. Lands eligible for participation in this program must be zoned Rural, Rural Cluster, or Rural Density Transfer, or must be determined to possess significant agricultural value. The program was created to increase both the level of voluntary participation in farmland preservation programs and expand the eligibility of farmland parcels. Through *FY2012*, _____ acres of farmland have been protected by this program.

In addition, beginning in *FY91*, Montgomery County implemented a change in the Executive Regulation, 66-91 "Agricultural Land Preservation Districts & Easement Purchases" which enabled the County to create, acquire and account for Transferable Development Rights (TDRs) as a part of the easement acquisition process. The TDRs created through the easement acquisition process are held by the County and represent an asset with the potential to be a source of future revenue for the program. Through *FY2012*, the County has acquired _____ Transferable Development Rights in association with the County's AEP program.

This program has provided the means by which the County has effectively achieved its farmland preservation goal by targeting exceptional and/or key properties for preservation. Since the funding for this program is not dependent upon the availability of State matching funds, the County can respond more efficiently to landowners needs, typically settling easements within 6 to 10 months.

Determining Easement Values for AEP

An important feature of this program is that easement values are determined by using an added value formula in conjunction with the Base Easement value determined by the County Executive annually as outlined on the following page. The added value formula method attempts to put in place a numerical scoring system that evaluates the suitability of the property for agricultural use. Added value formulas can also be used as a mechanism to rank properties in order of their priority for easement acquisition. These formulas "add value" to a calculated easement price base upon the extent of coverage that exists for each attribute being evaluated under the formula.



Outlined below is a summary of the AEP Base Value over time.

History of AEP Base Value

<u>FY</u>	<u>Base Value/Acre</u>
1989	\$700 per acre
1991	\$750 per acre
1999	\$800 per acre
2004	\$900 per acre
2005	\$1,500 per acre (1st 6 months FY05) \$1,700 per acre (2nd 6 months FY05)
2006-2011	\$1,700 per acre
2012	\$1,600 per acre

Easement applications are received by the County during open purchase periods corresponding to the fiscal year and then ranked. Easement acquisitions are ranked in order of the amount by which the landowner's offer price is lower than the maximum easement value as determined for each easement. Under this program easement values may range from \$1,600 per acre to \$8,942 per acre.

Program Modifications:

Modification of the County's Added Value Formula

The APAB recommends annually to the County Executive the established Base Easement Value to the added value formula. The APAB closely monitors the real estate market to determine if the current base value is in need of adjustment. The APAB recognized changes to the Added Value Formula for determining easement values required action by the County Council as part of the regulation promulgation process and implementation. These specific recommended changes were incorporated into Executive Regulation 03-09AM as part of the regulation update that was adopted on July 27, 2010.

Changes to the AEP Added Value Formula

Executive Regulation promulgated certain changes to parts of the added value formula valuation system. These changes provide greater flexibility in valuing the easements as well as considering an opportunity for landowners to extend long term leasing agreements with the local farming community. These changes are outlined below:

- Modification of the Land Tenure component to include consideration for point value when the land is being farmed by an operator under a long term lease agreement with the landowner.
- Modification of the Agricultural Zone Edge component to include the maximum point value award when a property inside the RDT zone is within one (1) mile of the border with other zones in the County, including incorporated towns.

The expansion of the land tenure component will provide a financial incentive by which long term leasing agreements can be executed between the rural landowner and the farm community. In addition, it is also time to expand the Agricultural Zone Edge component from 1/2 mile to 1 mile. Since 1989 this has not changed and we believe the time has come to now consider expanding the zone edge requirement. Executive Regulation 03-09, implements changes to Chapter 2B that were adopted by the County Council on November 18, 2008. This approach provides another financial incentive which we hope will attract more landowners into this program. We have purchased 19 easements under AEP that are located within 1/2 mile of the RDT zone border. This enhanced value has led to the preservation of these properties because we could offer a higher easement value in recognition of a greater threat of development.

Changes to Owner's and Child Lot Provisions within the Executive Regulation 03-09

Under an easement, the grantor of an Agricultural Preservation Easement retains certain rights to construct dwellings needed on the farm. The grantor must apply in writing to the Agricultural Preservation Advisory Board for approval to use. Executive Regulation 03-09AM implements changes relating to any release executed for an owner's lot or child lot under the program:

- Any release or preliminary release issued under this regulation shall include:
 - i. A statement that the owner's or child's lot may not be transferred for 5 years from the date of the final release, except on:
 - 1. Approval by the Agricultural Preservation Advisory Board (APAB); or
 - 2. a lender providing notice to the APAB of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure.

It is important to note that in 2003, the MALPF changed their regulations regarding releases for owners and children's lots to reflect a similar restriction on transfers. We believe the implemented changes as outlined above are consistent with the State program and would provide the County greater protection from potential abuse. It is important to note that similar restrictions have been implemented with regard to children's lot rights provided under zoning.

Executive Regulation 03-09AM reduces the number of future reserved residences for children from a maximum of ten (10), to a maximum of three (3) depending on the size of the farm property. Executive Regulation 03-09AM serves to implement changes to Chapter 2B that were adopted by the County Council on November 18, 2008.

A Dwelling to Support a Farming Operation

Executive Regulation 03-09AM provides Landowner's, at the time of easement sale application, the ability to request a single dwelling right, that is intended to run with the land, to construct one dwelling to support a farming operation provided:

- i. no viable dwellings exist on the land at the time of easement acquisition;
- ii. the landowner agrees that the requested dwelling must never be subdivided away from the land under easement; and
- iii. the landowner agrees that the requested dwelling is in lieu of any right to future child lots.

This dwelling right will ensure that farmland placed under easement may retain the ability for the land to support a farm family and not result in a vacant parcel that may limit the agricultural use.

3. Montgomery County Rural Legacy Program (RLP)- In 1997, the Rural Legacy Program (RLP) was enacted as part of the Governor's Smart Growth and Neighborhood Conservation Act. This State program provides competitive grants to Counties/Sponsors for preserving areas that are rich in agricultural, forestry, natural and cultural resources which, if protected, will promote a resource-based economy, protect greenbelts and greenways and maintain the fabric of rural life. Through *FY2012*, _____ acres have been protected by this program. As with the County's AEP program, the Montgomery County Rural Legacy Program provides the mechanism for the County to create, acquire and account for Transferable Development Rights (TDRs) as a part of the RLP easement acquisition process. The TDRs

created through the easement acquisition process are held jointly by the State/County and represent an asset and potential source of future revenue for the program. Through *FY2008*, the State/County has acquired 351 Transferable Development Rights through the County's RLP program.

As with the County's AEP program's Added Value Formula, the Rural Legacy Easement Valuation System (EVS) must also be modified over time to ensure that it is properly calibrated to value properties for easement acquisition. Since program inception in 1998-99, modifications have been made to the RLP EVS formula's base value. These adjustments were made so that the RLP EVS formula could be properly calibrated to value farmland for easement acquisitions.

Below is a summary of the history of the adjustments to the RLP Base Value.

History of RLP Base Value

<u>FY</u>	<u>Base Value \$ per point</u>
1998/99	\$4.56 per Point
2002	\$5.50 per Point
2004	\$7.50 per Point
2005/2006/2007/2008/	\$10.00 per Point

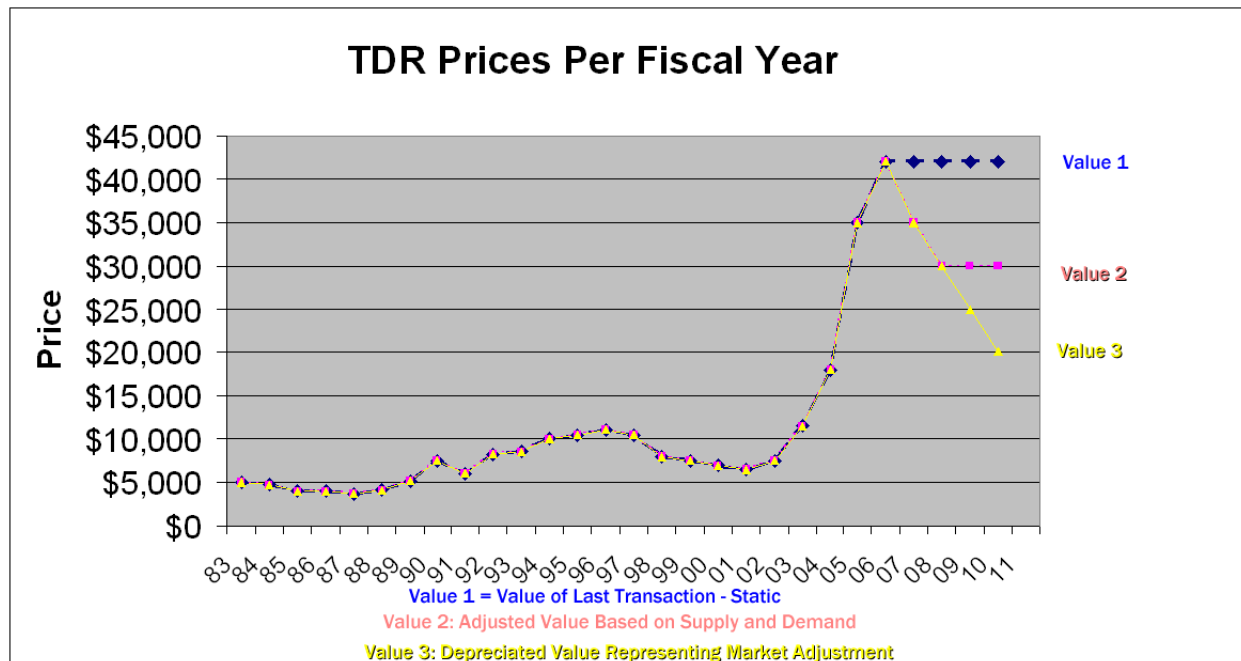
Under this program, easement values may range from \$3,500 per acre to \$8,000 per acre and can take between 8 to 12 months to complete settlement.

4. Maryland Environmental Trust (MET)- was established by the State Legislature in 1967 to encourage landowners to donate an easement on their properties. In return, landowners are eligible for certain income, estate, gift, and property tax benefits. A donated conservation easement to MET protects natural resources and preserves scenic open space including farm and forest land, wildlife habitat, waterfront, unique or rare areas and historical sites. A landowner who donates a conservation easement limits the right to develop and subdivide the land, now and in the future, but still retains title to the farm. By accepting the easement, MET agrees to monitor it forever to ensure compliance with its terms. Through *FY2012*, a total of 2,086 acres have been protected by this program.

5. Montgomery County Transferable Development Rights (TDR) Program -

The Transfer of Development Rights (TDR) program allows landowners to transfer a development right from one parcel of land to another parcel. For agricultural land preservation, TDRs are used to shift development from agricultural areas ("TDR sending areas") to designated growth zones or ("TDR receiving areas") which are located where we have public services. When rights are transferred from a parcel within the designated "TDR sending area," the land is restricted by a permanent TDR easement. The land to which the rights are transferred are called the "receiving area." A TDR program represents the private sector's investment in land

preservation, as the price paid for TDRs are negotiated between a landowner and a developer. A developer who purchases TDRs is permitted to build at a higher density than permitted by the “base zoning.” The funds paid for a TDR by the developer to a landowner creates a wealth transfer from the developed areas back into the rural economy. Through *FY2012*, a total of 52,052 acres have been protected by this program. Please note that MNCPPC reports that 64,566 acres are recorded under TDR easements and this total includes properties that are also protected through the programs listed 1 through 4.



6. Montgomery County Legacy Open Space Program (LOS)- While distinctly different from the Rural Legacy Program (RLP), the LOS program was established by the Maryland National Capital Park and Planning Commission in October 2000. The objective of this program is to conserve the County’s most significant open spaces. The program identifies natural resources, open space, agricultural and historic lands for conservation and creates a comprehensive strategy to protect the County’s “green infrastructure.” Acquisitions can be both “In Fee” and through “Conservation and Agricultural Easements.” While this program focuses on the protection of special, natural and environmental resources within 6 separate categories through the Legacy Open Space Master Plan, the only category directly related to farmland conservation is resource Category 5. As of 2012, LOS has not been directly involved in purchasing easements on farm properties.

7. Building Lot Termination Program (BLT)

The County Government approved the Legislative Act of January 6, 1981 creating the RDT Zone including the ability for landowners to develop their properties at a density of one house per twenty-five acres. Simultaneously to the creation of the RDT zone, the County created the Transferable Developments Rights (TDR) program as a mechanism for landowners to

recapture a portion of the equity lost resulting from the change in zoning. Landowners, who voluntarily elect to sell TDRs, encumber their property with a TDR easement that prevents the land from being re-zoned to a higher density. At the end of FY11, a total of 52,052 acres of agricultural land have been protected by TDR easements. Also during FY08, the County reached its preservation goal of protecting 70,000 acres of farmland through agricultural easements, including TDRs.

While we are very proud of achieving the 70,000-acre preservation goal, we also recognize that about 74 percent of the 70,000 acres are lands protected by TDR easements. While TDR easements prevent lands from being rezoned to higher development density, the lands protected by TDR easements often retain development potential consistent with the permitted density of the RDT zone. The heightened value associated with these tangible development rights combined with a growing number of residents who would like to see lower development density in the Agricultural Reserve prompted the development of a new program. Referred to as the Building Lot Termination Program (BLT), this program will provide enhanced compensation to landowners for the extinguishment of potential lots in the RDT zone. There will be two components to the BLT easement program. The first component will be a publicly funded initiative and the second will be funded on private market in a similar fashion as the County's nationally recognized Transferable Development Rights program (TDR). Both public and private funding components both require the termination of an on-site waste disposal system for each BLT proffered for sale.

The purpose of the Building Lot Termination Program (BLT) is to develop another mechanism that will enhance the farmland preservation programs and initiatives offered to the County's farmers and rural landowners. This initiative focuses on specific ways to encourage the preservation of farmland owned by individuals that have decided, for a variety of reasons, to not protect or encumber their farms through our traditional easement programs that are currently available. Council Bill 39-07 was adopted by the County Council on November 18, 2008 which provides the enabling authority for the Building Lot Termination program. This Bill also updates/revises processes for State Agricultural Easements as well as the County's Agricultural Easement Program.

Executive Regulation 3-09am, detailing the process for the implementation of the publicly funded BLT program and County AEP easement program was adopted by the County Council on July 27, 2010. During this period, DED drafted all necessary BLT easement recording documents, conducted a Request for Proposals for a BLT Program Appraisal Study, and awarded two state certified appraisers to conduct the BLT program appraisal study.

With completion of the appraisal study, DED analyzed appraisal studies and formulated recommendation to APAB so that a formal recommendation could be presented to County Executive to establish the BLT program easement values. DED Published by Executive Order 030-11 the BLT base value and Maximum Easement value. The first BLT open purchase period was announced beginning on April 1, 2011 and concluding on May 31, 2011. There were a total of 7 BLT applications for the first cycle, offering a total of 13 BLTs for purchase. Three applicants were tendered offers, covering 308 acres, and eliminating a total of 7 BLTs at a total cost of about \$1.7 Million Dollars. All three applicants accepted their easement offers and settlements are pending early 2012.

The second component of the BLT program involves partnership with the development community through a privately funded initiative that functions similarly to the County's Transferable Development Rights program. Under this privately funded initiative, BLT can be purchased through the private market for application of additional density that may be needed under the optional method of development in three designated BLT receiving zones. The three BLT receiving zones that have been developed thus far represent the Transit-Mixed Use Zone (TMX), Commercial-Residential Zone (CR) and Life Science Zone (LS).

8. Conservation Reserve Enhancement Program (CREP)- As part of a partnership between the United States Department of Agriculture and the State of Maryland, this program was developed beginning in 1997 to focus attention on a streamside buffer restoration initiative which would protect water quality and critical wildlife habitat. This program consists of two parts. The first part is the contract phase:

- Under CREP, a landowner contracts with USDA through the Farm Service Agency (FSA) or Soil Conservation District (SCD) to take land out of production and install conservation practices adjacent to streams and waterways. In return, a landowner receives annual rental payments for a period of 10 to 15 years.
- Through May 20011 *a total of 51 farms* covering 1,909 acres are under active CREP contracts.

The County is attempting to meet the objectives of the CREP program through the acquisition of 4,875 acres of Rural Legacy Conservation Easements. This program compliments CREP and draws from the same source of funds. It incorporates mechanisms to protect the natural resources by either maintaining or establishing a 65-foot buffer along both sides of the linear length of streams.

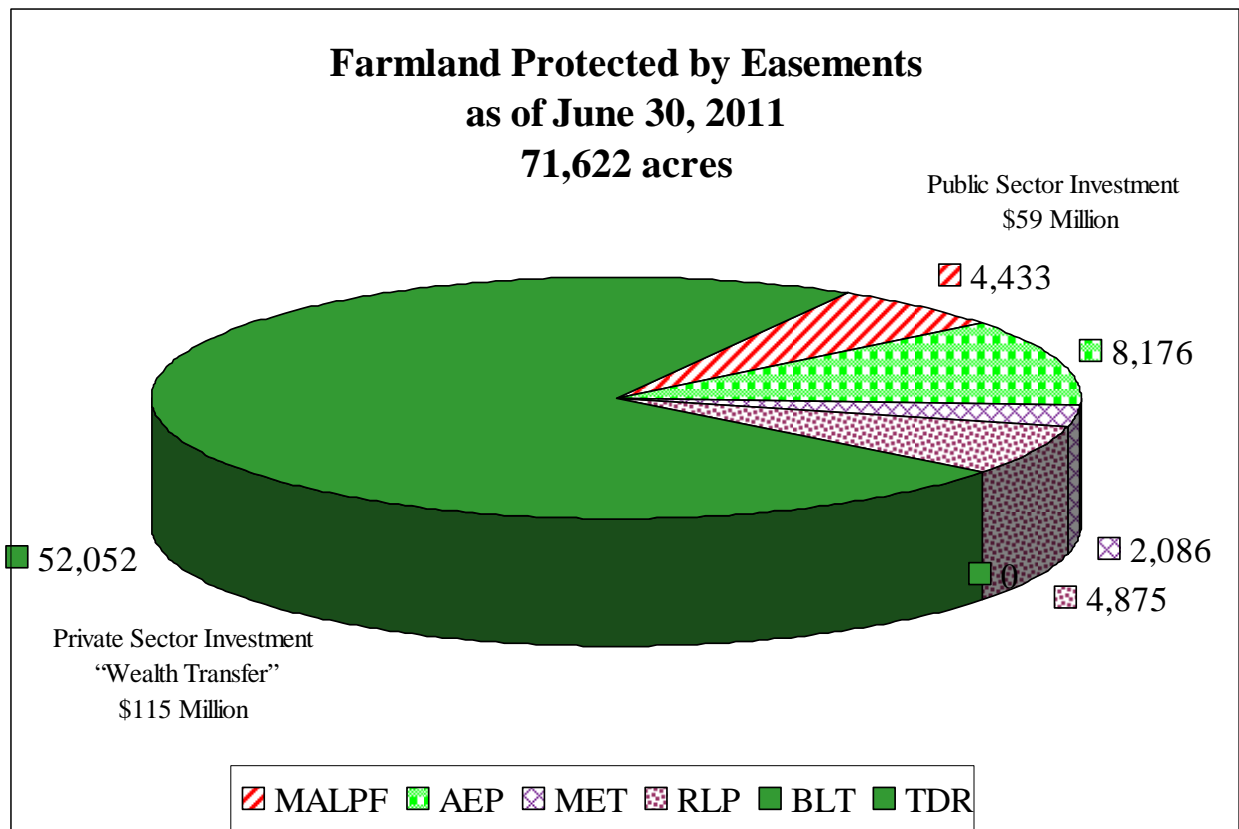
While one of the objectives of the Rural Legacy program is to promote the CREP program, landowners are given the option of choosing which program they prefer in order to implement the required riparian buffers. In all settled easements thus far, the landowners have chosen to implement the riparian buffer provisions through the Rural Legacy conservation easement and not through CREP. While CREP may not be the preferred vehicle by which riparian buffers are established and protected, the objectives of CREP are met through the Rural Legacy conservation easement provisions. Through *FY2011*, over 20 miles of buffers are permanently protected under the RLP program.

Achievement of 70,000 Acres of Farmland in Preservation:

Montgomery County's established goal of protecting 70,000 acres of farmland reached completion of this milestone during FY2008. Achievement of the goal has been attained two years ahead of our projected schedule. A press event announcing this milestone was held on January 29, 2009. Montgomery County Executive Isiah Leggett today joined members of the County's agriculture industry, Department of Economic Development (DED) staff and invited guests to announce the agricultural land preservation easement acquisition of the 75 acre W. Drew Stabler/Sunny Ridge Farm.

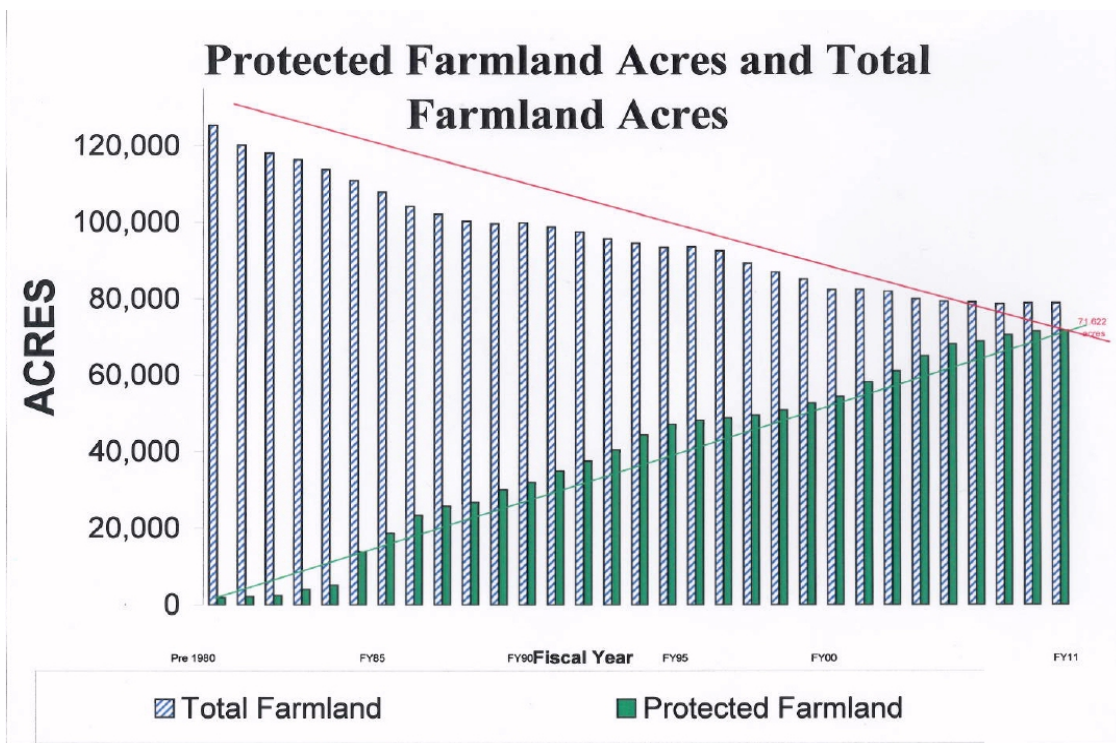


The acquisition of Sunny Ridge Farm, located in the Laytonsville/Damascus area, helped the County reach its goal of preserving 70,000 acres of farmland through protective easements well ahead of the 2010 goal.



Agricultural Easement Stewardship:

Once the land is protected by an agricultural or conservation easement, the job of protecting the land is far from over. All easement properties must be monitored to ensure landowner compliance with all of the easement covenants. As part of the County's easement acquisition program, easement properties are periodically inspected. Easement stewardship is an ongoing requirement of any easement program and it will be necessary long after the last easement is purchased by the County or State. The dedication of local resources, including staff, must be provided to ensure that the investment in the protection of the agricultural resources is achieved. This vital programmatic component will ensure that all citizens within the County are the beneficiaries of farmland preservation. In *FY2011*, over 4,915 acres of farmland in agricultural preservation easements were inspected by DED staff for compliance with program guidelines. Staff is on track to complete over 5,000 acres for FY2012. All easement holders who were inspected were cooperative and helpful with the process and no significant issues were found on these farms.



Future Initiatives:

VI. Future Initiatives

The success of our farmland preservation programs depends on several factors including the amount of funding available and the state of our local economy and real estate market. Tradition has shown that farmland preservation program participation increases at times when the local economy and real estate market is experiencing downward trends. Having appropriate preservation tools in place at the right time represents a critical challenge for us in assuring our preservation goals are met. Exploration of innovative program changes, alternative funding sources, policy changes, regulatory relief, and the expansion of both private/public sector investments all may be required in order to continue a successful farmland preservation program in Montgomery County.

Now that we have achieved our goal of 70,000 acres of farmland preserved, Montgomery County ranks second in the nation in the number of acres of preserved farmland, and is first in the nation for the percentage of County land that is in agricultural preservation. While this recognition is a great accomplishment for the County and the farmers who live here, our work is not done. We must take steps to provide an enhanced level of protection to lands that are only protected by TDR easements. These properties may still be fragmented at a rate of one house per every twenty-five acres. This means that the APAB may wish to establish a new goal for enhancing the level of protection of lands only protected by TDR easements. This enhanced level of protection can be achieved through programs like MALPF, AEP, RLP and the BLT programs.

Innovative Changes and Enhanced Farmland Preservation Programs

Enhanced Farmland Preservation Programs:

Action Item #1: Assist in the Development Community in the Implementation of Private BLT's

The longevity of the BLT program approach will be vested in developing a sustainable private market for application of BLT in designated BLT receiving areas. To assist the development community DED will be drafting several tools to help educate the development community:

1. Development of Fact Sheets for BLT application in TMX, CR, LS receiving zones to assist the development community as well as landowners in understanding how BLT purchased through the private market could be valued when considering the additional density that may be needed under the optional method of development and assisting in calculating the number of BLTs (either full or partial) that would need to be purchased.
2. Development of BLT/Square Footage Calculator: This tool will calculate the relationship between full or partial BLTs to specific additional square footage that could be applied under the optional method of development in all three zones for either commercial or residential uses, or based upon specific square footage

needs, the number of BLTs that would need to be purchased to achieve density requirements under the optional method of development.

3. Development of guidance materials which will educate the development community on the process to legally create, serialize, and transfer BLTs, including templates of draft recording documents.
4. Provide linkage to willing buyers and willing sellers through buyer/broker listings and through interactions will sellers seeking to privately market BLTs.
5. Development of Methodology for valuation of purchased density of Partial BLTs needed by development community
6. Development of “Purchased Density Certificate” for developers needing Partial BLTs that can be acquired through contribution to the Agricultural Land Preservation Fund

Action Item #2: Settlement of Building Lot Termination Program Easements (BLT)

Complete the first BLT publicly and privately funded BLT easement acquisitions. The Publicly funded BLT easements are scheduled to settle between December 2011 – April 2012. The first privately funded BLT easement acquisitions are likely to settle during spring of 2012. We are aware of a total of 4 BLTs that are under contract for private acquisition associated with the TMX zone in the Twinbrook area of the County. We are also aware of at least 3 separate projects in the Commercial Residential Zone (CR) that have indicated they need BLT for the optional method of development outlined in their development plans. This will mean that there are additional BLTs that will be transferred on the private market in the year ahead.

Expand Agricultural Economic Support Initiatives to Promote Farmland Viability

Expansion of the Private Sector and Public Sector Investment in Farmland Preservation.

Since we have achieved our goal of 70,000 acres of preserved farmland, it will become more challenging to preserve the remaining unprotected land and the land only protected by TDR easements. We must strive to adopt changes that will serve as incentives to foster greater participation in farmland preservation on the lands that remain. This includes the expansion of both the private sector and public sector investments in farmland preservation.

Action Item #3 – Continue to Implement Improvements to our TDR programs, Promote Non Residential Uses for TDRs through the expansion of Urban Growth Areas.

Montgomery County's TDR program has long been admired nationally as the model for Transferable Development Rights programs. Many jurisdictions across this country have studied

our example and worked towards implementing programs of their own. While we have benefited from this exposure, we have not been working aggressively enough to ensure its continued viability. Any program that has existed for over 32 years must be modified on occasion to enhance its effectiveness in meeting the needs of the citizens. The TDRs are responsible for protecting over 52,052 acres of farmland, which represents about 74% of the farmland preservation properties protected to date. The outcome of this TDR program represents an economic development initiative into the rural economy from the private sector investing \$115 million and TDRs play a pivotal role in our public policy objectives.

We must continue to expand the use of TDRs within the County wherever possible and not continue to erode capacity (referenced in MNCPPC TDR reports as diminished capacity) that has already been approved within the various Master Plans. By promoting the concept of non residential uses for TDRs, it is anticipated that values for non-residential TDRs would be higher and more in line with the level of compensation that is necessary to encourage preservation that as been expanded through the BLT program for the TMX, CR and LS zones. This expanded approach can help establish a private sector investment in the further protection of agricultural land by providing a financial mechanism will approach a fair and equitable exchange for those rights that will entice landowners to forgo residential development retained on farms where only the buildable TDRs remain (1 unit for every 25 acres.)

The County must also enhance planning and implementation efforts in our urban growth areas. By re-investing in our urban growth areas we can ensure that our citizens are exposed to healthy and sustainable communities. To this end, the recommendations in the Ad Hoc Agricultural Policy Working Group Report must become a part of our future planning goals.

Action Item #4 – Increase the number of acres of preserved farmland that are inspected for compliance with program guidelines.

In order to update the schedule of biannual easement inspections and continue with the ongoing effort to monitor the integrity of agricultural easements in Montgomery County, we will increase the number of acres inspected in FY12 by 50%, to reach a goal of at least 5,000 acres of preserved farmland inspected in FY13.

The Winds of Change:

The agricultural industry within the County is constantly evolving. We must recognize that changing trends in agriculture are not unique to Montgomery County, nor is change a sign of demise of the agricultural industry. Changes are a normal part of an evolving market-driven system. The key for any industry to survive is dependent upon its ability to adapt to these changes. The County must be in a position to adapt to these changes as well. One of the main philosophies the County employs for farmland preservation is to protect the agricultural land base and let the industry focus on the direction it wants to go. We do not protect farmland for any particular type of agriculture activity or use.

If the County recognizes the importance of agriculture within its borders then government must assume the responsibility of recommending and implementing measures to ensure its survival. A key recommendation within the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space details on page iv is that there must be "*application of*

incentives and regulations to preserve farmland and rural open space and to encourage agricultural use of the land."

These future initiatives and the decisions that are made will have a profound impact on the future of agriculture. We must ensure the next generation will be the beneficiaries of productive farmland and open space amenities. To this end we will have protected an important part of our heritage as well as enhancing the quality of life for all citizens of Montgomery County.

Summary of Appendices:

Appendix A: Montgomery County Agricultural Easement Program
(County AEP and State MALPF)
Actual Expenses for Pre FY 1989-2011

Appendix B: Montgomery County Agricultural Easement Program
(County AEP and State MALPF)
Revenue Collections/Expenses (Beginning with Certification)

Appendix C: Montgomery County Agricultural Easement Program
All Funding Sources (Local/State)
(County AEP and State MALPF and RLP)
Actual Expenses for Pre FY 1989-2011

Appendix D: Montgomery County Agricultural Land Preservation Map

Appendix E: Program data/Easement Inventory